

STATE OF SOUTH CAROLINA
DEPARTMENT OF INSURANCE

IN THE MATTER OF

South Carolina Health Cooperative, Inc.
Application for Licensure as a Multiple
Employer Self-Insured Health Plan

ORDER
NUMBER: 2012-01

This matter comes before me pursuant to the application of South Carolina Health Cooperative, Inc. ("SCHC") to become licensed as a Multiple Employer Self-Insured Health Plan in accordance with the provisions of §§ 38-41-10 *et seq.*, and other applicable provisions of South Carolina law.

STATEMENT OF THE CASE

Pursuant to South Carolina Code of Laws, Article 13, Chapter 71, Title 38, SCHC became registered with the South Carolina Department of Insurance ("Department") as a small employer health cooperative effective December 8, 2010. S.C. Code § 38-71-1345(A)(6) provides that a health group cooperative may not assume any risk or form self-insurance plans among its members unless it complies with the provisions of Chapter 41 of Title 38. SCHC has filed an application with the Department to form a Multiple Employer Self-Insured Health Plan pursuant to the requirements of S.C. Code Ann. Section 38-41-10, *et seq.*

The application and subsequent amendments submitted by SCHC to become licensed as a Multiple Employer Self-Insured Health Plan were reviewed by Department staff. Department staff recommends conditional licensure of this Multiple Employer Self-Insured Health Plan and relies upon the following in making that recommendation. All documents referred to below are incorporated by reference as if the contents were fully recited verbatim herein:

- a) the MEWA application, and subsequent amendments, submitted by SCHC to date;
- b) SCHC's certification that it has informed and secured the signatures of all participating employers of their potential liability for all claims for benefits covered under the plan, which are incurred by his or its covered employees and their covered dependents, but which the plan has failed to pay. Participating employers have acknowledged this requirement by signing a hold harmless agreement on forms provided by the Department;

c) SCHC was found to meet the majority of the requirements set forth in S.C. Code Ann. Section 38-41-10, *et seq.* (1976, as amended) and 25A S.C. Code Ann. Reg. 69-42 (1976, as amended) governing the licensure of Multiple Employer Self-Insured Health Plans in this state;

d) an actuarial certification from SCHC's actuary, Mark Haarer, dated May 15, 2012, a letter from Mark Haarer dated May 24, 2012, an addendum to the certification of May 15, 2012 dated May 31, 2012, a letter dated June 1, 2012 serving as a further addendum to the certification of May 15, 2012 and further clarification of the letter dated May 31, 2012, and a discussion and e-mail exchange between the Department's Chief Actuary, Leslie Jones, and Mr. Haarer further clarifying the certification all of which are incorporated herein by reference and attached as exhibits;

e) the terms and conditions of the Lloyd's Self-Funded Medical Excess Loss Assurance Agreement No. LL-0179-060112, and Chief Financial Analyst, Tim Campbell's March 6, 2012 letter signed upon the letter by the Lloyd's Underwriter, J. Allan Hall & Associates, on behalf of the eleven Subscribing Insurers of Lloyd's and dated March 15, 2012 along with J. Allan Hall's March 15, 2012 letter to the Department confirming that the Lloyd's Self Funded Medical Excess Loss assurance agreement and the Endorsement attached to it as Page 34 complies with the full intent of S.C. Code Ann. Section 38-41-50;

f) representations made by underwriters at Lloyd's London to the Department in a letter dated March 15, 2012 (incorporated herein by reference and attached as an exhibit) that the (1) excess loss assurance agreement and endorsement issued to SCHC is subject to S.C. Code of Laws Section 38-41-50; and (2) Lloyd's London will abide by South Carolina Code and regulations as written and amended during the time the excess loss assurance agreement and endorsement are in place; and

g) the Underwriter's confirmation to the letter dated March 6, 2012 from Mr. Tim Campbell, Chief Financial Analyst. It is the Department's understanding that the Underwriter's confirmation applies to the Lloyd's Self-Funded Medical Excess Loss Assurance Agreement No. LL-0179-060112.

Accordingly, the Department's staff recommends conditional approval of SCHC to be licensed as a Multiple Employer Self-Insured Health Plan in South Carolina.

FINDINGS OF FACT

Having considered the recommendations of staff based upon their review of the applicable law, application, correspondence, stop loss policy, actuarial certifications and all other relevant documents, and further, being fully advised on all premises, I hereby find and conclude:

1. SCHC is registered by the Department in South Carolina as a small employer health cooperative.

2. Under South Carolina law, a multiple employer self-insured health plan does not have guaranty fund protection. Accordingly, the following have been put in place by statute for the protection of South Carolina citizens:

- a. loss reserves and surplus account;
- b. individual excess stop-loss coverage;
- c. aggregate excess stop-loss coverage;
- d. employer guaranty (required employer hold harmless agreement); and
- e. a participating employer's fund.

SCHC warrants and represents that the foregoing comply with the applicable requirements of South Carolina law.

3. After the original application, SCHC and the Department have engaged in extensive discussion regarding the structure of the Multiple Employer Self-Insured Health Plan and the safeguards that must be put in place to ensure the protection of employees enrolled in the plan. SCHC must agree to:

- a. provide and maintain during the existence of the Multiple Employer Self-Insured Health Plan a loss reserve and surplus account sufficient to satisfy Section 38-41-70. Such amount in the surplus account may be in the form of an executed irrevocable letter of credit or funds held in trust or a combination of both;
- b. continue to comply with all requirements for licensure;
- c. secure hold harmless agreements disclosing to participating employers their potential for liability in the event of insolvency or plan termination (*see* hold harmless agreements);
- d. provide an annual actuarial certification, based on sound actuarial principles and reasonable assumptions consistently applied, of compliance with 38-71-970, 38-71-1345 and 38-41-50, including assurance that: 1) the plan has a participating employer's fund in an amount at least equal to the point at which the excess or stop-loss insurer shall assume 100% of the additional liability; 2) the portion of assessments used for funding the SCHC participating employer's fund including reserves, together with specific and aggregate reinsurance contracts, including endorsements and additional representations made by underwriters to the Department make full provision for risk of coverage for all SCHC members; 3) the portion of "premium-equivalent" assessments collected from SCHC members to cover self-funded claims

together with reserves or surplus account as defined in paragraph 3.a. above and/or additional reserves held in trust or in the form of an irrevocable letter of credit or a combination thereof will fully fund the plan's maximum obligation; 4) the total premium-equivalent assessments together with amounts held in reserves and surplus accounts will cover the plan's self-funded claim risk, stop-loss premiums and administrative expenses; and 5) the probability that incurred claims that are not covered by the individual stop-loss coverage will exceed the participating employer's fund and the aggregate limit contained within the excess of loss contract is less than .01%; and

- e. cure any financial deficiencies identified by its actuary or the Department, including those specified in subsection d(5) or the Department by: 1) increasing rates charged to plan participants; 2) increasing the aggregate stop-loss coverage limit; 3) increasing the amount of the letter of credit; 4) taking such other prudent action under the circumstances, or any combination of these measures subject to the approval of the Department.

- 4. To date, SCHC has not provided the final actuarial certification.

CONCLUSIONS OF LAW

I have considered the statutory requirements for licensure and I make the following conclusions of law:

- 1. I have jurisdiction over the parties and the subject matter. *See* S. C. Code Ann. § 38-41-10 *et seq.*, and 25A S.C. Code Ann. Reg. 69-42 and other pertinent provisions of the South Carolina Insurance Code.

- 2. The requirements for licensure of a Multiple Employer Self-Insured Health Plan are set forth in S. C. Code Ann. § 38-41-10 *et seq.*, and 25A S.C. Code Ann. Reg. 69-42. Nothing in this order is intended to modify or alter the provisions of those sections or other applicable provisions of South Carolina law or the application by the Department of those provisions.

- 3. SCHC's conditional licensure as a Multiple Employer Self-Insured Health Plan is conditioned on the following statutory requirements:

- a. Within the first sixty (60) business days of commencing business SCHC must undergo an organizational examination of its administrative affairs, books, records, and financial condition conducted by the Department's Chief Financial Examiner and/or her staff to ensure that adequate procedures are in place to process premiums and pay claims covered by SCHC. This examination must be conducted in accordance with the requirements of Chapter 13, and the cost of the examination must be borne by the Multiple Employer Self-Insured Health Plan pursuant to the provisions of Section 38-41-80. The organizational examination shall include an actuarial review by an

independent actuary chosen by the Department. Among other things the actuary will confirm that SCHC's maximum obligation is fully funded. Should the organizational examination uncover any inadequacies in the organizational structure and planned operation of SCHC, SCHC must remedy the deficiencies within sixty (60) days. Failure to properly remedy the deficiencies will be cause for revocation and may result in the summary revocation of SCHC's license to operate as a Multiple Employer Self-Insured Health Plan. All policies and certificates of coverage issued by SCHC must have a written or stamped notice in bold print on the face of the document with the words: **'This coverage is not afforded guaranty fund protection.'**

- b. SCHC must comply with all state and federal laws pertaining to health insurance including the provisions of the Patient Protection and Affordable Care Act.
- c. SCHC must maintain a full and correct record of its business. Information from these records must be furnished to the director or his representatives on demand and the original books or records must be open to examination by the director or his representatives when demanded.
- d. Pursuant to the requirements of S.C. Code Ann. Section 38-41-10, *et seq.* (1976, as amended) and 25A S.C. Code Ann. Reg. 69-42 (1976, as amended), SCHC must submit an annual report on its condition and affairs with the Department. Under S.C. Code Section 38-41-80 (1976), SCHC must also submit quarterly reports on its condition and affairs on forms prescribed by the Department. Such reports shall be filed with the Department not later than forty-five (45) days after the close of the calendar quarters ending on March 31, June 30 and September 30. Since the annual report required in Section 38-41-80(d) will reflect a plan's condition and affairs at December 31, no separate quarterly report for the quarter ending December 31 shall be required on its financial condition to the Department on forms prescribed by the Department. The first quarterly report for SCHC shall be as of June 30, 2012 and is due on or before August 15, 2012.
- e. SCHC must notify the Department of any proposed amendments to its By-Laws, change in business address, change of third party administrator, or change in its officers or directors within thirty (30) days of any such change. *See* S.C. Code Ann. Section 38-41-40.
- f. Pursuant to S.C. Code Ann. Section 38-41-30, no later than March 30 of each year, SCHC must pay to the Department a license fee equal to two percent of the claims paid by the plan during the immediately preceding calendar year.
- g. SCHC must maintain excess stop-loss coverage that includes provisions to cover incurred, unpaid claim liability in the event of plan termination. The excess or stop-loss insurer must bear the risk of coverage for any member of

the pool that becomes insolvent with outstanding contributions due. SCHC must submit a copy of the stop-loss insurance contract to the Department for any renewals of the coverage.

- h. SCHC must maintain a participating employer's fund in an amount at least equal to the point at which the excess or stop-loss insurer shall assume one hundred percent of additional liability. SCHC may purchase aggregate accommodation coverage to satisfy this requirement.
- i. Funds collected from participating employers must be held in trust subject to the requirements of S.C. Code Ann. Section 38-41-60.
- j. SCHC must establish loss reserves for all incurred losses, both reported and unreported, and for unearned premiums in the same manner required for health insurers under Sections 38-9-170 and 38-9-190 and it must maintain a surplus account as provided for in S.C. Code Ann. Section 38-41-70.
- k. SCHC must maintain records and provide proof upon request of the Director that it has and maintains a minimum of ten member employers and a minimum of two hundred fifty covered employees.
- l. SCHC must furnish to the Department copies of all hold harmless agreements signed by employers joining the plan after a license has been issued within ten (10) days after the employer joins the plan.
- m. Comply with the requirements for stop loss coverage set forth in S.C. Code of Laws § 38-41-50 and S.C. Code Ann. Regs. 69-42 (D).
- n. SCHC must furnish the actuarial certification required in Findings of Fact Section 3.d. above to the Department on or before July 15, 2012 and annually thereafter.


IT IS THEREFORE ORDERED THAT the South Carolina Health Cooperative is granted conditional approval for licensure as a Multiple Employer Self-Insured Health Plan in South Carolina beginning June 1, 2012, subject to the stipulations and requirements of this order and all state and federal laws governing the operation of Multiple Employer Self-Insured Health Plans.

SCHC must transmit to this Department its written response to the stipulations and the requirements on or before August 31, 2012. Should any of the representations made by SCHC prove not to be accurate, including, but not limited to the actuarial certification, or should SCHC fail to comply with any of the aforementioned stipulations or requirements, such will be cause for revocation and may result in the summary revocation of SCHC's license to operate a Multiple Employer Self-insured Health Plan. Pursuant to S.C. Code Section 38-3-210 an order issued by the director or his designee is

subject to judicial review in accordance with the appellate procedures of the South Carolina Administrative Law Judge Division, as provided by law.

IT IS SO ORDERED.

June 15, 2012
Columbia, South Carolina


Gwendolyn Fuller McGriff
Acting Director